

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOHN DAVID McBRIDE,

Petitioner,

v.

Civil Action No. 3:11CV179

HAROLD W. CLARKE,

Respondent.

MEMORANDUM OPINION

John David McBride, a Virginia prisoner, brings this 28 U.S.C. § 2254 petition for a writ of habeas corpus challenging his convictions in the Circuit Court for the County of Fairfax of carnal knowledge by intercourse of a child less than fifteen years of age and carnal knowledge by fellatio of a child less than fifteen years of age. By Memorandum Opinion and Order entered on November 4, 2008, the Court denied a prior 28 U.S.C. § 2254 petition by McBride challenging these convictions. *McBride v. Johnson*, No. 3:08cv246, 2008 WL 4809857, at *4 (E.D. Va. Nov. 4, 2008).

The Antiterrorism and Effective Death Penalty Act of 1996 restricted the jurisdiction of the district courts to hear second or successive applications for federal habeas corpus relief by prisoners attacking the validity of their convictions and sentences by establishing a “‘gatekeeping’ mechanism.” *Felker v. Turpin*, 518 U.S. 651, 657 (1996). Specifically, “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Because McBride has not obtained authorization from the United States Court of Appeals for the Fourth Circuit to file a successive

§ 2254 petition challenging his Fairfax County Convictions, this Court lacks jurisdiction to entertain the present § 2254 petition. Accordingly, the action will be DISMISSED FOR LACK OF JURISDICTION. McBride's outstanding motions (Docket Nos. 2, 6, 14) will be DENIED.

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1)(A). A COA will not issue unless a prisoner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). No law or evidence suggests that McBride is entitled to further consideration in this matter. A certificate of appealability will be DENIED.

An appropriate Order shall issue.

Date: 6-8-11
Richmond, Virginia

<p style="text-align: center;">_____ /s/ James R. Spencer Chief United States District Judge</p>
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